

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**CIVIL MISC. APPLICATION NO. 090 OF 2018**

**(ARISING FROM HIGH COURT CIVIL REVISION NO. 008 OF 2015)**

5 **(ARISING FROM BUDIBUGYO FTP – 01 – LM – 0033 OF 2009)**

**BAMUGAYA DEO ::: APPLICANT**

**VERSUS**

**1. PETER TINKASIMIRE**

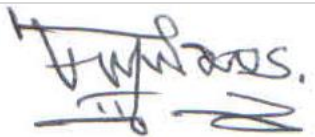
10 **2. DORIKA MBUMANAKOLE ROSE ::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

**RULING**

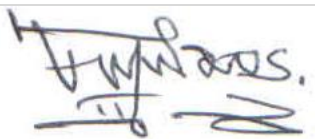
The applicant brought this application under Section 82 of the Civil Procedure Act  
15 and Order 46 rules 1(a), (b) and 8 of the Civil Procedure Rules for orders that:

- 1. The decision of this Honorable court in Civil Revision No. 008 of 2015 dated 27<sup>th</sup> October 2016 and the resultant execution be set aside.**
- 2. That the 2<sup>nd</sup> Respondent be ordered to comply with the order of the Magistrate Grade One at Bundibugyo dated 30<sup>th</sup> June 2010.**
- 20 3. That costs of taking out the application be provided to the applicant.**



The grounds in support of the application are contained in the affidavit of the applicant where he contended thus:

1. That the applicant acquired/inherited the suit land of approximately two acres from his late father Muwemba who had also inherited the same from his father, the late Biribwa. That he was born and grew up on the suit land from 1966 with his other 8 siblings. That he stayed on the said land with his mother Nastazia Kabonesa until she got married to another man and shifted to Soroti in 1980 when his father Muwemba was serving as a soldier in Obote II Government.
2. That in or about 1994, his Aunt Asimwe Perepetwa, who was in relationship with the 1<sup>st</sup> Respondent approached him and requested him to allow them stay on the suit land with the applicant. That the applicant gave them space where they constructed a semi permanent house and the 1<sup>st</sup> Respondent thus came and started staying on the suit land with his Aunt.
3. That in or around 1998, the applicant sold off part of the 2 acres. That due to the ADF conflict in Budibugyo, he left with his mother and started staying in Soroti until 2009. That when he was going to Soroti, he left his Aunt, the 1<sup>st</sup> Respondent who was his Aunt's lover in charge of the suit land as a caretaker, on which he had three semi-permanent houses.
4. That surprisingly when he returned from Soroti in 2009, he found the 2<sup>nd</sup> Respondent in occupation of the land and the three semi-permanent houses that the applicant had on the suit land. That his Aunt and the 1<sup>st</sup> Respondent were nowhere to be seen. That upon making inquiries, he learnt from the Area Local Council 1, that the 2<sup>nd</sup> Respondent had bought the land on 17<sup>th</sup> August 2000 from the 1<sup>st</sup> Respondent. That the sale of the suit land by the 1<sup>st</sup>

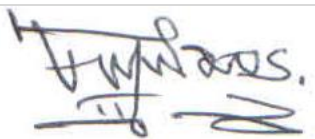
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Respondent to the 2<sup>nd</sup> Respondent is illegal as the land belongs to the applicant who hosted the 1<sup>st</sup> Respondent and his Aunt temporarily.

5. That after learning of the illegal sale of his land, he sold the remaining land off the 2 acres which was not encroached upon by the 2<sup>nd</sup> Respondent to one Jackson Magezi who now neighbors the disputed land. That in the same year 2009, he dragged the 1<sup>st</sup> Respondent to Kitui Village Local Council Court for recovery of the Disputed land where the 1<sup>st</sup> Respondent conceded and admitted on 12<sup>th</sup> May 2009 to having sold the suit land that belonged to the applicant and undertook to refund the money to the 2<sup>nd</sup> Respondent on 30<sup>th</sup> June 2009.

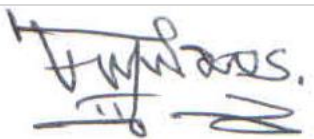
6. That the understanding was confirmed by Kitui L.C 1 Court on 12<sup>th</sup> August 2009 reasoning that the 1<sup>st</sup> Respondent had no powers to sell the suit land since it belonged to the Applicant and as such he had no title to pass to the 2<sup>nd</sup> Respondent. That the 1<sup>st</sup> Respondent was notified of the decision by the L.C. 1 Court.

7. That the applicant was later put into possession of the disputed land on the basis of the judgment of L.C.1 . That the 2<sup>nd</sup> Respondent sought to enforce the order of L.C 1 Court at Budibugyo Grade One Court where the applicant was invited by the Magistrate Grade One at the said court. That he responded to summons on 30<sup>th</sup> June 2010 and explained to court how the 1<sup>st</sup> Respondent sold land that did not belong to him to the 2<sup>nd</sup> Respondent to defeat the interests of the applicant. That on the 30<sup>th</sup> of June 2010, the Magistrate made a decision dated 30<sup>th</sup> June 2010 to set aside the decree in Civil Suit No. 22 of 2009 dated 18<sup>th</sup> December 2009 and ordered the 2<sup>nd</sup>

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Respondent to amend the plaint and include the chairperson of the area to resolve all the issues in controversy.

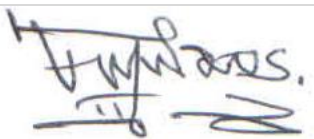
- 5 8. That instead of complying with the order by the Magistrate, the 2<sup>nd</sup> Respondent chose to mislead the Chief Magistrate by concealing the fact that the Grade One Magistrate of Bundibugyo had already set aside the judgment/decreed dated 18<sup>th</sup> December 2009. That the High Court made an order directing execution of the decree of the Magistrate Grade One made in 2009 which had be set aside in 2010.
- 10 9. That the errors and mistakes that led to the passing of the order by the High Court were induced onto court by the cunning and dishonest conduct of the 2<sup>nd</sup> Respondent to evade the order directing her to amend the plaint so that all issues in controversy are fully investigated. That the said errors and mistakes made are apparent and manifest on the face of the court record.
- 15 10. That the High Court made an order directing the applicant to vacate without affording him a right to be heard since he was not a party in Civil Revision No. 008 of 2015 hence effecting his interests. That by concealing the fact that the decree dated 18<sup>th</sup> December 2009 had been set aside, the 2<sup>nd</sup> Respondent let court to mistakenly order execution of the same whereas the same was non –existent having been set aside on 30<sup>th</sup> June 2010.
- 20 11. That the revision proceedings went on without his knowledge and involvement and he was shocked to see Bailiffs in 2017 when they went to enforce the orders of court. That being aggrieved, he approached the trial judge to whom he explained the genesis of the dispute at hand and the judge advised him to seek the services of Legal Aid.

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12. That it is in the interests of substantive justice that this application is allowed and the 2<sup>nd</sup> Respondent ordered to comply with the decision of the Trial Magistrate dated 30<sup>th</sup> June 2010 and the applicant is given an opportunity to be heard as regards ownership of the disputed land.

5 The application was opposed by the Respondent who contended thus;

1. That it is not true that the applicant was the owner of the suit land. That at all material times, she had known the 1<sup>st</sup> Respondent as the owner of the suit land and the houses he was renting. That at the time of purchase, the L.C 1 Chairperson Mr. Mugenyi Abdulman and the Secretary of the committee  
10 were present and no mention of the applicant as the owner of the suit land was made. That the applicant admitted that he was absent from the suit land and the Local Council officials confirmed that the land belonged to the 1<sup>st</sup> Respondent not the applicant.
2. That the applicant had no cause of action against her since she never dealt  
15 with him. That she was evicted pursuant to the decision of Kitui L.C 1 yet she was not a party to the same. That as a result of the eviction, she filed a case in the Chief Magistrate's Court of Bundibugyo which ended in her favour. That she failed to execute and she filed a complaint vide FPT – 00 – CV – MC N0. 0065 of 2010 to the Chief Magistrate who was the Acting  
20 Deputy Registrar who summoned the Chairperson Mugenyi Asuman and Monday Robert the Vice chairperson who explained on how she acquired the suit land and the case was referred to the trial judge.
3. That it is not true that there was an order setting aside the judgment in Civil  
25 Suit No. 22 of 2009 and if any, the court was functus officio since it could not set aside a judgment made by itself.

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4. That she never induced court into making the ruling that the applicant is challenging and that it was in the interests of justice and equity that the application is dismissed since it is an abuse of court process and if any, the applicant's cause of action lies against his mother.

5 **Representation:**

*M/s Aguma Kifunga & Co. Advocates* represented the applicant while *M/s Mugabe – Luleti & Co. Advocates* represented the Respondent. A schedule to file submissions was given to the parties on 6<sup>th</sup> April 2020 and both complied. I have considered the written submissions of the parties.

10 **Issues:**

I adopt the following issues:

(1) *Whether the applicant has locus to originate the application at hand.*

(2) *Whether the applicant's application satisfies the grounds for grant of a review of the ruling of His Lordship Oyuko Anthony Ojok in Misc. Application No. 008 of 2015.*

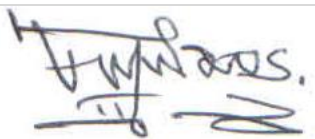
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(3) *Remedies available to the parties.*

**CONSIDERATION OF THE APPLICATION:**

**ISSUE ONE: Whether the applicant has locus to originate the application.**

For one to invoke the jurisdiction of court in an application for review, he or she must be an aggrieved party. Section 82 of the Civil Procedure Act provides that:  
20 “Any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act,

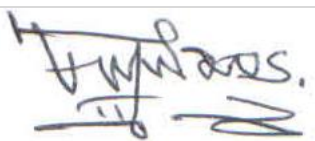


*may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit”*

Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules do not define **aggrieved party** for purposes of review. I am guided by case law. In **Re Nakivubo Chemists (U) Ltd [1979] HCB 12** **aggrieved party** for purpose of review was defined as a person who has suffered a legal grievance. Justice Karokora JSC (as he then was) in **Muhammed Bukenya Allibai Vs. W.E Bukenya & Anor, SCCA No. 56 of 1996** defined an **aggrieved party** as a party who has been deprived of his property and stated thus:

*“it’s trite that a third party may apply for review if he/she establishes that he/she is an aggrieved person, is one who has a legal grievance; per Yusuf versus Nokrach [19710 EA 104, in Re Nakivubo Chemists (U) Ltd (1971) HCB 12, - to the effect that a person suffers a legal grievance if the judgment given is against him or affects his interests.(See also Natunga Sarah Vs. Erivania Sarah & Anor Misc. Application No. 0064 of 2020 at page 2).”*

The applicant herein averred that he inherited the suit land from his father, the late Muwemba and his Mother Muhindo Rehema. That he was in possession of the suit land by virtue of the judgment of L.C. 1 of Kitui that confirmed him as the owner of the suit land. That the ruling in Civil Revision No. 008 of 2015 passed by this court affected the land in which he was in possession and he was later evicted there from on the basis of the said ruling. He stated that he was not a party to Civil Revision No. 008 of 2015 that led to his eviction from the suit land. That he

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claimed interests in the suit land as an owner having inherited the same from bus parents.

I find that the applicant is an aggrieved party within the meaning of Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules.

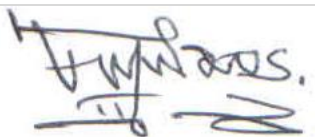
5 **ISSUE TWO; *Whether the applicant’s application satisfies the grounds for grant of a review of the ruling of His Lordship Oyuko Anthony Ojok in Misc. Application No. 008 of 2015.***

Under Order 46 of the Civil Procedure Rules, Review is limited to three grounds, that is:

- 10 (a) That there is some mistake or error apparent on the face of the record.  
(b) Discovery of new and important evidence that could not be produced during the hearing and the making of the decision  
(c) Any other sufficient cause.

15 The applicant contends that there is a mistake or error apparent on the face of the record. The Civil Procedure Rules do not define what constitutes *a mistake or error apparent on the face of record*. In *Levi Outa Vs. Uganda Transport Company [1995] HCB 340* court defined what constitutes as error apparent on the face of the record thus:

20 *“the expression ‘mistake or error apparent on the face of the record’ refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It maybe an error of law, but law must be definite and capable of ascertainment.”*

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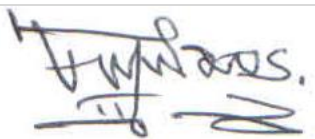


In the Indian case of *Mr. Satish Kumar Vs. Chief Secretary, RA No. 51/2013 and MA No. 688/2013 mistake or error apparent* was described thus:

5           *“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of facts or the legal position. If the error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be an error apparent on the face of the record for purposes of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or*  
10 *judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of law or fact.”*

A mistake or error apparent on the face of the record must be glaring on the face of the court. It should not require an extensive evaluation of the law and the evidence  
15 in order to find and see it. It should not be about the legality or validity of the judgment or decision of court in relation to the laws applicable on the merits. It’s resolution should not result in the court sitting as an appellate court to examine the legality and correctness of its own decision, which is a preserve of the appellate court.

20 In this case the alleged mistake or error on the face of the record is that the Learned Trial Judge ordered for execution of the decree of the Chief Magistrate’s Court of Bundibugyo in Civil Suit No. 22 of 2009 made on 24<sup>th</sup>January 2009 that had already been set aside by the same court on 30<sup>th</sup>June 2010. It was contended for the Respondent on the other hand that the Grade One Magistrate of Bundibugyo could

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not set aside its decision in FPT – 00 – CV – LM – No. 22 of 2009 without an application for review since it was functus officio.

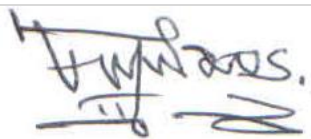
The record reveals that the Respondent filed FPT – 01 – CV – LM 022 of 2009 seeking a declaration that the plaintiff is rightful owner of the plot against a one Peter Tinkasimire (1<sup>st</sup> Respondent). There is a decree dated 18<sup>th</sup> December 2009 entered in favour of the 2<sup>nd</sup> Respondent. There are also proceedings in the same file before His Worship Kawesa, Magistrate Grade One on 30<sup>th</sup> June 2010 between the 2<sup>nd</sup> Respondent as plaintiff and the first Respondent as defendant where the said Magistrate made a ruling directing the 2<sup>nd</sup> Respondent to file an amended the plaint and include other defendants and he stated thus:

***“The plaintiff is advised to amend her plaint to include all the defendants who ought to appear as defendants. Judgment in Civil Suit No. 22/2009 is set aside in the S. 98 of the CPA case adjourned to 14<sup>th</sup>/7/10 for hearing.”***  
***(Emphasis added).***

The legal effect of the said finding was that the decree issued by court in Civil Suit No 22 of 2009 was set aside and therefore there was no decree.

The Learned Judge in Civil Revision No. Revision No. 008 of 2015 made his ruling on the basis that the decree of the Chief Magistrate’s Court of Bundibugyo in Civil Suit No. 22 of 2009 was still standing. In his ruling at page 4 he stated thus:

***“.... Therefore, the application is should be allowed and Court Order that the decree as issued by the Chief Magistrate’s Court of Bundibugyo be executed without any further interference. Let the current occupant vacate***

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*the suit land and seek remedies against the Respondent and not the Applicant.”*

5 It is evident from the record that the decree that learned Trial Judge was referring to in the Chief Magistrate’s Court of Bundibugyo is the one in Civil Suit No. 22 of 2009 from where an application for revision arose. By the time the Judge delivered a ruling on 27<sup>th</sup> October 2016 directing that the decree of Chief Magistrate’s Court of Bundibugyo be executed, there was no decree in existence as the same had already been set aside by his Worship Kawesa, the Magistrate Grade One at Bundibugyo on 30<sup>th</sup> June 2010 and therefore there was no valid decree to execute.

10 I find therefore that there is a mistake or error apparent on the face of the record which does not require examination of facts or any kind of legal reasoning. The decision by His Worship Kawesa was valid and binding and the same was not set aside by the Learned Judge in his ruling dated 27<sup>th</sup> October 2016.

15 The ruling of the Learned Trial Judge was thus mistaken and erroneous and no court could allow such an error to stand on its record. It follows that the resultant execution of the orders of the Learned Judge in Civil Revision No. 008 of 2015 were a nullity and the same is hereby set aside.

I will not consider the other grounds since the first ground disposes of the entire application. This application therefore succeeds with the following orders:

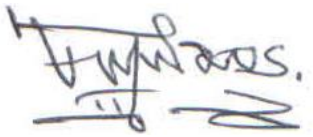
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- 1. The decision of the Learned Hon. Justice Oyuko. Anthony Ojok in Civil Revision No. 008 of 2015 dated 27<sup>th</sup> October 2016 and the resultant execution are hereby set aside.**
  - 2. The 2<sup>nd</sup> Respondent is hereby directed to comply with the order of the Magistrate Grade One at Bundibugyo dated 30<sup>th</sup> June 2010, that**



is, she should amend the **plaint** and include the other defendants including the Applicant and have the matter tried before the Chief's Court of Budibugyo.

- 5           **3. The 2<sup>nd</sup> Respondent shall remain in use and possession of the suit land until court determines the proper owner of the suit land in Civil Suit No. 22 of 2010.**
- 4. Both Respondents shall pay to the Applicant half of the taxed costs.**
- 5. The Assistant Registrar of this Court is directed to Transfer the Lower Court file to Bundibugyo Chief Magistrates for an expedited**
- 10           **hearing.**

It is so ordered.



Vincent Wagana

**High Court Judge / Fort-portal**

15   **17.02.2023**

